

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CHEVRON ENVIRONMENTAL MANAGEMENT  
COMPANY, CHEVRON ENVIRONMENTAL SERVICES  
COMPANY, TEXACO, INC.,

Plaintiffs,

v.

INDIAN REFINING I LIMITED PARTNERSHIP (f/k/a  
Indian Refining Limited Partnership), INDIAN REFINING &  
MARKETING I, INC. (f/k/a Indian Refining & Marketing,  
Inc.), DANIK CORPORATION (f/k/a Indian Refining  
Management Company f/k/a Indian Refinery Management  
Company), CASTLE ENERGY CORPORATION, WILLIAM  
S. SUDHAUS, WITCO CORPORATION, PIONEER  
ASPHALT CORPORATION, and CROMPTON  
CORPORATION,

Defendants,

and

DANIK CORPORATION (as successor in interest to Danik  
Corporation),

Defendant/Third-Party Plaintiff,

v.

METALLGESELLSCHAFT CORPORATION,

Third-Party Defendant.

Case No. 02-cv-4162-JPG

**MEMORANDUM AND ORDER**

This matter comes before the Court on the Stipulation of Dismissal (Doc. 238) pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) filed by all parties who have appeared in this case. However, Rule 41(a)(1)(ii) is inapplicable in that it speaks only of dismissing “an action” and not dismissing one claim or one defendant. To remedy this deficiency, the Court construes the stipulation as an agreed motion to voluntarily dismiss with prejudice pursuant to

Rule 41(a)(2) all claims in the Third Amended Complaint against defendant Danik Corporation (as successor in interest to Danik Corporation, and referred to in prior orders by the Court as “Danik 2”) and all claims in the Second Amended Third-Party Complaint, which is solely against third-party defendant Metallgesellschaft Corporation. Rule 41(a)(2) provides that only the Court may dismiss an action after an adverse party has filed an answer or motion for summary judgment or in the absence of a stipulation of dismissal of the entire action signed by all parties who have appeared. The Court hereby **GRANTS** the motion to dismiss (Doc. 238), **DISMISSES with prejudice** all claims in the Third Amended Complaint against defendant Danik Corporation (as successor in interest to Danik Corporation, and referred to in prior orders by the Court as “Danik 2”) and all claims in the Second Amended Third-Party Complaint, which is solely against third-party defendant Metallgesellschaft Corporation, and **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of the case. Defendant Danik Corporation (as successor in interest to Danik Corporation, and referred to in prior orders by the Court as “Danik 2”) and third-party defendant Metallgesellschaft Corporation are terminated from this action, and all claims in the third-party action have been resolved. The motion to dismiss (Doc. 215) filed by defendant Metallgesellschaft Corporation is rendered **MOOT** by this order.

**SO ORDERED:**

s/ J. Phil Gilbert  
**Judge**

**Dated this 8th day of June, 2005.**